

E-Filed 8/25/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

HOWARD ALLEN YOUNG,
Petitioner,

No. C 09-1462 RS (PR)

FOURTH ORDER TO SHOW CAUSE

v.

DERRAL ADAMS, Warden,
Respondent.

INTRODUCTION

This is a federal habeas corpus action filed by a *pro se* state prisoner pursuant to 28 U.S.C. § 2254. Petitioner has filed numerous objections to the Court's orders to show cause. The Court construes his most current objections as a request to file an amended petition and as an amended petition. The cognizable claims are: (1) the admission at trial of four uncharged criminal offenses violated due process; (2) the admission at trial of hearsay evidence of three additional uncharged burglaries violated due process; (3) abuse of discretion by the trial court in allowing the prosecutor to impeach petitioner with all four of petitioner's prior felony convictions; (4) violation of petitioner's rights to a speedy trial and

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1 to a preliminary hearing; (5) imposition by the trial court of an “illegal enhancement” by
 2 failing to bifurcate the trial with respect to his prior convictions; (6) ineffective assistance of
 3 counsel; (7) the identification of petitioner was constitutionally faulty; (8) there was
 4 cumulative error; and (9) the trial court’s use of CALCRIM No. 375 violated petitioner’s
 5 right to be convicted by proof beyond a reasonable doubt. Liberally construed, these claims
 6 are cognizable and require a response. Respondent may file a motion to dismiss regarding
 7 any of these claims.

8 Petitioner’s claim regarding his completion of the Regimented Correction Program is
 9 DISMISSED without prejudice on grounds that it is related to his release date, not to the
 10 constitutional validity of his convictions. If petitioner seeks relief based on his RCP claim,
 11 he must file a separate habeas action.

12 **Petitioner having attempted to revise his petition multiple times, the Court will**
 13 **not consider any other motions to amend the petition, any amended petitions, or any**
 14 **objections to the Court’s current determination of which claims are cognizable.**

15 This Fourth Order to Show Cause is the operative order. The Third Order to Show
 16 Cause (Docket No. 42) is VACATED and the parties are relieved of the obligations imposed
 17 by that order.

18 The Court having addressed the concerns raised in petitioner’s current motions,
 19 Docket Nos. 48 & 49, such motions are DENIED. This order terminates Docket Nos. 48 &
 20 49.

21 CONCLUSION

22 1. The Clerk shall serve by certified mail a copy of this order, the petition and all
 23 attachments thereto, on respondent and respondent’s counsel, the Attorney General for the
 24 State of California. The Clerk shall also serve a copy of this order on petitioner.

25 2. Respondent shall file with the Court and serve on petitioner, within ninety (90)
 26 days of the date this order is filed, an answer conforming in all respects to Rule 5 of the
 27 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not
 28

1 be granted based on petitioner's cognizable claims. Respondent shall file with the answer
2 and serve on petitioner a copy of all portions of the state trial record that previously have
3 been transcribed and that are relevant to a determination of the issues presented by the
4 petition.

5 3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse
6 with the Court and serving it on respondent's counsel within thirty (30) days of the date the
7 answer is filed.

8 4. In lieu of an answer, respondent may file, within ninety (90) days of the date this
9 order is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory
10 Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files
11 such a motion, petitioner shall file with the Court and serve on respondent an opposition or
12 statement of non-opposition within thirty (30) days of the date the motion is filed, and
13 respondent shall file with the Court and serve on petitioner a reply within fifteen (15) days of
14 the date any opposition is filed.

15 5. Petitioner is reminded that all communications with the Court must be served on
16 respondent by mailing a true copy of the document to respondent's counsel.

17 6. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
18 Court and respondent informed of any change of address and must comply with the Court's
19 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
20 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

21 7. Upon a showing of good cause, requests for a reasonable extension of time will be
22 granted provided they are filed on or before the deadline they seek to extend.

23 8. This order terminates Docket Nos. 48 & 49.

24 **IT IS SO ORDERED.**

25 DATED: August 24, 2010


RICHARD SEEBORG
United States District Judge